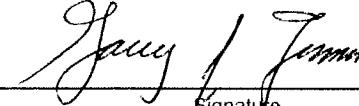


<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>HBO-20CON2 (11664-004-999)</b>	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>		Application Number <b>10/039,855</b>	Filed <b>October 19, 2001</b>
		First Named Inventor <b>John K. BILLOCK</b>	Art Unit <b>2623</b>
		Examiner <b>Annan Q. SHANG</b>	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).</p> <p>Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. <b>40,210</b> Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>		 <b>Garry J. Tuma</b> Signature Typed or printed name <b>(212) 326-7845</b> Telephone number <b>December 19, 2007</b> Date	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*</p>			

\*Total of **1** forms are submitted

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
PATENT APPLICATION

Applicants:	John K. Billock et al.	Confirmation No.:	1770
Application No.:	10/039,855	Art Unit:	2623
Filed:	October 19, 2001	Examiner:	Annan Q. Shang
For:	VIDEO-ON-DEMAND SERVICE WITH AN INTERACTIVE INTERFACE FOR FACILITATING VIEWER SELECTION OF VIDEO PROGRAMS	Attorney Docket:	HBO-20 CON2 (11664-0004-999)

New York, New York 10017  
December 19, 2007

Mail Stop AF  
Hon. Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REMARKS FOR PRE-APPEAL BRIEF CONFERENCE**

Sir:

Applicants hereby request review of all rejections in the November 29, 2007 final Office Action (“FOA”), because anticipation has not been established. In particular, each and every element as set forth in applicants’ claims is not found in the cited reference.

**Status of Claims**

Claims 1-38 are pending in this application and all stand rejected under 35 U.S.C. § 102(e) as being anticipated by Hendricks U.S. Patent Application Publication No. 2005/0157217 (hereinafter “Hendricks”).

**Applicants’ Invention**

Applicants claim video-on-demand (VOD) services and methods of operating VOD services that are accessible by subscribers and non-subscribers of those services. In

particular, non-subscribers may select from a list and view segments/prevIEWS of full-length video programs, but not the full-length programs themselves, which only subscribers may view.

Independent claims 1, 10, 16, 19, and 36 each define a method of operating a VOD service that is accessible to non-subscribers of that service. The methods include transmitting or displaying a segment or preview of a video program selected by a non-subscriber, but not transmitting/displaying a full-length video program selected by the non-subscriber.

Similarly, independent claims 7, 14, and 21 each define a VOD service in which prevIEWS can be selected by and transmitted to non-subscribers of the service, but full-length video programs can only be transmitted to subscribers of the service.

### **The Hendricks Reference**

As discussed in applicants' September 18, 2007 Reply To Office Action, Hendricks is from the outset directed to only subscribers of its program delivery system. For example, Hendricks is titled: "Remote Control Menu Driven Subscriber Access To Television Programming" (emphasis added).

Hendricks' 32 double-column pages of specification is replete with references to subscribers of its program delivery system:

"The present invention is a program delivery system which provides subscribers with a user friendly interface to operate and exploit a six-fold or more increase in current program delivery capability." (Page 1, paragraph 13, lines 7-11; emphasis added.)

"Subscribers will be able to access the expanded program package and view selected programs ...." (Page 1, paragraph 14, lines 1-2; emphasis added.)

"The delivery system employs ... a set-top terminal in each subscriber's home." (Page 2, paragraph 18, lines 1-3; emphasis added.)

"[T]he subscriber may select desired programming through the system's menu-driven scheme ...." (Page 2, paragraph 28, lines 1-3; emphasis added.)

“A subscriber can easily navigate through the menu system ....” (Page 18, paragraph 269, lines 14-15; emphasis added.)

Hendricks does not disclose or suggest what access, if any, a non-subscriber has to its program delivery system.

Indeed, Hendricks does not even describe how a non-subscriber can become a subscriber.

Hendricks, therefore, does not disclose or suggest a system or method in which a non-subscriber can request and receive on demand a preview or segment of a video program while being prevented from viewing a full-length video program.

#### **The Examiner’s Response to Applicants’ September 18, 2007 Reply To Office Action**

The Examiner disagreed with applicants’ arguments and said “Figures 30-32 illustrates where upon receiving a non-subscriber request, the system subscribes the viewer and displays a message ‘Thank you for subscribing! You are joining the channel in progress.’ (fig.32). Furthermore in fig.33, if the viewer is a subscriber the system displays a message ‘You are a current subscriber. Thank you! ...joining now in progress’” (FOA, page 2).

The Examiner also said “Hendricks further illustrates in figs. 35-38 and 111-114, messages/images to the viewer that enables non-subscribers to subscribe to a program(s)/channel(s),” citing Hendricks’ pages 19-26, paragraphs 280-294, 296-302, 316-317, 330-336, and 353-358 (*id.* at pages 2-3).

#### **The Examiner’s Mischaracterization of Hendricks**

Hendricks’ “FIGS. 30 through 34 relate to ordering of specialty channels” (page 23, paragraph 330, line 1; emphasis added).

“This … is different from [applicants’ invention] … in that individual programs [or previews] are not ordered but instead channels are subscribed to” (page 23, paragraph 330, lines 8-10; emphasis added):

“After the subscriber selects a channel, the channel description submenu 1160 of FIG. 31 replaces the major menu on the subscriber’s television screen.... FIG. 31 shows that the subscriber has ordered the Science Fiction channel” (*id.* paragraph 331, lines 1-3; emphasis added).

“FIG. 32 shows a submenu 1164 which confirms the subscriber’s order and thanks him for subscribing. If the subscriber is already paying for the selected channel ... he is provided with ... FIG. 33 informing him that he is a current subscriber of the Science Fiction channel (pages 23-24, paragraph 332, lines 1-6; emphasis added).

Thus, Hendricks is offering premium channels to subscribers willing to pay extra -- not free VOD previews or segments to non-subscribers.

Nowhere does Hendricks even mention a “non-subscriber.” Hendricks makes very clear that its system is available to only subscribers:

“The network controller 214 must ... authorize subscriber channel access, and authorize particular set top terminals to operate in the system” (page 6, paragraph 133, lines 5-9; emphasis added).

“If a subscriber has failed to pay a recent bill, ... controller 214 can deauthorize the subscriber’s set top terminal 220” (*id.* paragraph 134, lines 5-7; emphasis added).

“When a subscriber orders a program or channel ... controller 214 checks the subscriber’s account for good standing and then authorizes the access by signaling the set top terminal 220” (*id.* at lines 7-10; emphasis added).

Thus, not only does Hendricks not disclose or suggest that non-subscribers can order and view previews, but apparently only subscribers in good standing can order and view programs or channels in Hendricks’ program delivery system!

**Hendricks Does Not Anticipate Applicants' Claims**

Accordingly, the following claim limitations are not met by Hendricks:

“said [video-on-demand] service accessible to subscribers and non-subscribers of said service” (claims 1, 10, 16, 19, and 36; emphasis added);

“said first signal acknowledges access of said service at said viewing station by one of said non-subscribers” (claim 3; emphasis added);

“a ... computer that allows ... said previews to be transmitted to subscribers and non-subscribers of said service” (claim 7; emphasis added);

“said viewing station is operated by one of said non-subscribers” (claim 15; emphasis added);

“displaying on said display any of said segments selected ... by one of said non-subscribers” (claim 16; emphasis added);

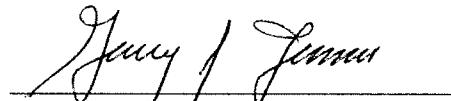
“transmitting one of said segments [of a video program] to a viewing station when said comparing indicates that said identifier is not on said list of identifiers [identifying subscribers] and said selection corresponds to said one segment” (claim 19; emphasis added); and

“a first computer programmed to allow ... said previews to be transmitted to subscribers and non-subscribers of said service” (claim 21; emphasis added).

**Conclusion**

Claims 1-38 are not anticipated by Hendricks and should therefore be allowable.

Respectfully submitted,



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